

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ABDULLAH SPENCER EL DEY, : :
: Plaintiff, : 20-CV-7208 (JMF)
: :
-v- : :
: :
CYNTHIA BRANN, et al., : : MEMORANDUM OPINION
: Defendants. : AND ORDER
: :
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JESSE M. FURMAN, United States District Judge:

On July 11, 2022, Defendants filed a motion to revoke Plaintiff's *in forma pauperis* status. ECF No. 55. The motion is unopposed, but the Court nevertheless DENIES it as meritless. To the extent relevant here, the Prisoner Litigation Reform Act prohibits prisoners from bringing a civil action *in forma pauperis* if they have, "on 3 or more *prior* occasions," accrued "strikes" — that is, filed cases or appeals that were dismissed as "frivolous, malicious, or fail[ed] to state a claim upon which relief may be granted." 28 U.S.C. § 1915(g) (emphasis added). Defendants cite to four cases Plaintiff filed that were dismissed as meritless, but all four cases post-date the filing of the instant case. Accordingly, these cases do not constitute "strikes" for purposes of this case. See, e.g., *Justice v. Merchant*, 12-CV-5103 (JS), 2012 WL 6061000, at *1 (E.D.N.Y. Dec. 5, 2012); *Eady v. Lappin*, 05-CV-0824 (NAM), 2007 WL 1531879, at *3 (N.D.N.Y. May 22, 2007). Defendants' motion is therefore DENIED.

That said, Plaintiff's failure to file anything since September 30, 2021, see ECF No. 40, and his failure to respond to Defendants' motion casts doubt on whether he remains interested in prosecuting this case. If Plaintiff intends to prosecute this case, he shall file a letter to that effect

no later than **October 17, 2022**. If the Court does not receive any communication from Plaintiff by that date, the Court will dismiss the case for failure to prosecute without further notice. If Plaintiff does file a letter indicating his intent to prosecute the case, Defendants shall file any motion for summary judgment within **three weeks** of the date on which the letter is docketed.

Counsel for Defendants shall conduct a diligent inquiry into Plaintiff's current whereabouts, shall serve a copy of this Order on Plaintiff at any and all addresses where he may be residing by **September 23, 2022**, and shall file proof of such service by **September 27, 2022**.

The Clerk of Court is directed to terminate ECF No. 55.

SO ORDERED.

Dated: September 16, 2022
New York, New York



JESSE M. FURMAN
United States District Judge